

**Serial Number 09/548,910****PATENT****IBM Docket No. RAL9-00-0014****REMARKS**

This amendment is filed in support of the claims in this RCE application. The amendment responds to the Final Office Action mailed March 31, 2004.

With respect to claim 2, the Examiner raised objection in that printers in line 13 should have been 'pointers'. In response, the claim is amended to change 'printers' to 'pointers'.

The Examiner also states that 'selecting one of the queues to service' should be changed to 'selecting one of the calendars to service'. In response, applicants disagree with this change. Making the change suggested by the Examiner would not cover the invention which claim 2 is intended to cover. In claim 2 the calendars are used to identify the queues from which an information unit is transmitted to a network. To amend the claim as suggested by the Examiner would change the invention. As a consequence applicants maintain that the claim as-is is correct and the Examiner's suggestion to change 'selecting one of the queues to service' to 'selecting one of the calendars to service' cannot be made.

Claims 3-8 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. In particular the Examiner argues that it is not clear what is meant by "whereat an indicia identifying a source providing said single information unit is placed". Even though applicants believe that the clause merely identifies what is placed at the location of one of the calendars and in that regard does not render the claim indefinite. It is applicants' contention that the clause is surplusage

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and as a consequence is deleted from the claim. The Examiner also raised objection to claim 4. In response, the claim is amended as is set forth above. In particular, the claim states that at least one of the time-based calendars includes  $n$  related calendars and that each of the  $n$  calendars has  $m$  partitions.

Claim 2 is provisionally rejected under the court-created doctrine of double-patenting. In response, applicants believe that claim 2 as amended describes and claims an invention independent to the one set forth in application number 09/548,907 and application number 09/548,912. It is applicants' contention that any one of the claims which the Examiner has identified could be infringed without infringing the claim set forth in the present application. As a consequence applicants argue that this is an indication of independent inventions which are separately patentable.

Claim 2 is rejected under 35 USC 102(b) as being anticipated by Hughes et al. (U.S. Patent 5,835,494). The Examiner's comparison between claim 2 and Hughes reference is set forth on pages 5 and 6 of the Office Action. For brevity it is not repeated but can be reviewed if necessary.

It is applicants' contention that the amended claim clearly distinguishes from the Hughes reference. In particular, the claims call for at least two time-independent calendars scheduling others of the information unit based upon non-predefined bandwidth requirement and according to round-robin priority selection between the at least two time-independent calendars. This element of the claim is not disclosed or suggested in Hughes. It is settled law that in order for a reference to anticipate a claim every feature, operation and element of the claim must be disclosed or inherent in the cited reference. It is applicants' contention that the Hughes reference neither explicitly

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nor inherently discloses the recited feature. Therefore, claim 2 is not anticipated by the reference.

Claim 1 is rejected under 35 USC 103(a) as being obvious over Pillar et al. (U.S. Patent 6,438,106) in view of Sterne et al. (U.S. Patent 5,818,839). The Examiner's arguments supporting the rejection is substantially the same as in the amendment preceding the final rejection. With respect to this rejection applicants stand by the argument made in the amendment dated January 16, 2004. In that amendment applicants specifically argue that the scope of the Pillar et al. reference is too indefinite to render applicants' claim 1 obvious. For example, in the Pillar et al. reference Figures 1 and 5 the connection schedulers are not defined or described. They are shown as oblong shaped circles labeled CS0 through CS7. It is applicants' contention that the broad disclosure and teaching set forth in Pillar et al. reference is insufficient without more to render claim 1 which specifically claims different calendar types for scheduling.

Furthermore, applicants argue that the scheduler in Pillar is priority based and utilizes statistical priority guarantee queueing (column 4, lines 1-25). It is applicants' contention that this type of scheduling is inapposite to the calendar type scheduling set forth in claim 1. Stated another way in Pillar et al. scheduling is done by manipulating priority whereas in claim 1 scheduling is done by different types of calendar. In this regard applicants contend that the reference is inapposite and teaches away from the claimed invention. It is applicants' position that this teach-away is indicia of unobviousness.

By using different type calendars bandwidth is guaranteed and variable size packets can be accommodated (see page 15, last paragraph, applicants' specification). This is a benefit flowing from applicants' claimed invention and not

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present in Pillar et al. which uses priority based scheduling. It is applicants' contention the novel structure and benefits are evidence of nonobviousness.

In addition, applicants submit herewith a statement under 37 CFR 1.132. This statement clearly shows that one of the inventors review the Pillar reference and conclude that the teachings in that reference would not suggest to an artisan the invention set forth in claim 1. In view of the above it is applicants' contention that the Examiner's combination would not render claim 1 and its dependent claims obvious.

Regarding claims 10-15 the Examiner states that they are allowed and as such have not been discussed further in this document.

As for claim 9 the Examiner indicates it would be allowed if rewritten in independent form. In response, claim 9 is written in independent form and is now in a condition for allowance.

It is believed that the present amendment answers all the issues raised in the final rejection. Re-examination is hereby requested and an early allowance of all claims is respectfully solicited.

Respectfully Submitted,



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